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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,312	07/07/2003	W. John Gardenier	1442.041	8270
23405	7590	09/20/2005	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI PC			LE, HUYEN D	
5 COLUMBIA CIRCLE			ART UNIT	
ALBANY, NY 12203			PAPER NUMBER	
			3751	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/614,312

Applicant(s)

GARDENIER, W. JOHN

Examiner

Huyen Le

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11, 23-27, 29-39, 41, 42 and 55-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 23-27, 29-39, 41, 42, 55-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In regard to claim 7, it unclear to the examiner as to how a user-operable diverter diverting at least some of the pressurized water away the water inlets when the user-operable diverter is positioned in a conduit which is positioned between one manifold outlet and a set of water inlets.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 4, 6, 8, 9, 11, 23-27, 29, 30, 32-39, 41, 42, 55-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardenier et al (6,185,757).

The Gardenier et al reference discloses a system for providing pressurized water to a set of water inlets 214,216 in a bathing enclosure, the bathing enclosure 202 comprising: a seat 220 having a horizontal portion at an elevation (Fig. 2); and a foot well positioned below the elevation, the system comprising one source of pressurized

Art Unit: 3751

water 308 (Fig. 3); at least one manifold 402 having at least one inlet in fluid communication with the at least one source of pressurized water and a plurality of outlets 110 in fluid communication with the set of water inlets 214, 215, and a user-operable diverter 404 configured to divert at least some of the pressurized water away from the water inlets 214,216 and to the foot well below the elevation ( Fig. 2).

Regarding claim 2, since the water flows from a pressurized source through the user-operable diverter 404 (the inner cylinder) before flows out to the manifold 402 (the outer cylinder), the user-operable diverter 404 is considered positioned “upstream” of the manifold 402.

Regarding claim 3, the user-operable diverter 404 comprises a variable user-operable diverter.

Regarding claim 4, the set of water inlets 214,216 comprise a plurality of first water inlets having a first pressure drop to the flow of water therethrough, and wherein the bathing enclosure comprises at least one second water inlet 212 comprising a second pressure drop to the flow of water therethrough, wherein the user-operable diverter 404 diverts at least some of the pressurized water to the at least one second water inlet 212 of the bathing enclosure 202 wherein the second pressure drop is less than the first pressure drop because first water inlets comprises a plurality of openings 214,216 around the tub causing more pressure drop along the path.

Regarding claim 6, the system further comprises at least one conduit 306 between the source of pressurized water and the manifold inlet, wherein the user-operable diverter 404 is in fluid communication with the conduit 306.

Regarding claims 8 and 36, the user-operable diverter 404 comprises a valve.

Regarding claims 9 and 39, the system comprises a plurality of pumps and wherein the user-operable diverter comprises a plurality of valves.

Regarding claims 23-27, 39, 30, 32-34 and 60, the method for providing pressurized water to a set of water inlets in a bathing enclosure is inherently performed during the normal use of the Gardenier et al system.

Regarding claim 37, the valve comprises a variable pressure relief valve 418 (Fig. 4).

Regarding claim 55, the system comprises a plurality of seats as shown in Fig. 2.

Regarding claim 56, the set of inlets are positioned above the seat elevation Fig. 2.

Regarding claim 57, the manifold 402 comprises a plenum into which the least one inlet discharges water and from which water is distributed to the plurality of outlets 110.

Regarding claim 58, the bathing enclosure contains water having a water level above the seat elevation, and wherein the bathing enclosure further comprises a foot well water inlet located at a elevation below the water level.

Regarding claim 59, the foot well water inlet is located at a elevation wherein the water introduced to the foot well by the foot well water inlet minimizes the impact of the

Art Unit: 3751

water introduced via the foot well water inlet on the comfort or bathing experience of a bather.

Regarding claim 61, the bathing enclosure further comprises a foot well positioned below the seat elevation of the at least one seat, and wherein the variable diverter is configured to divert at least some of the pressurized water away from the set of water jets and to the foot well.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobias et al (5,115,974).

Although the Tobias et al reference does not specifically disclose that the second pressure drop of the second water inlet is at least 50 percent less than the pressure drop across the first set of water inlets, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select pressure drop for the second inlet within a certain range to best fit a particular a water system for a bathing device and to optimize the performance. See In re Aller, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-9, 11, 23-27, 29-39, 41, 42, 55-61 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Hall, Pinciario and Mathews references show a water distributing system for a tub.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 14, 2005

Huyen Le  
Examiner  
Art Unit 3751



DAVID J. WALCZAK  
PRIMARY EXAMINER